



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/621,670	07/24/2000	Mark Ashby	032005-068	6902

7590 04/21/2005

Robert E. Kerbs
Burns, Doane, Swecker & Mathis L.L.P.
P.O. Box 1404
Alexandria, VA 22313-1404

EXAMINER

IZAGUIRRE, ISMAEL

ART UNIT PAPER NUMBER

3765

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/621,670

Applicant(s)

ASHBY, MARK

Examiner

Ismael Izaguirre

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-24 and 45-48 is/are allowed.
- 6) ☒ Claim(s) 25, 27, 29-31, 38, 40, 42 and 44 is/are rejected.
- 7) ☒ Claim(s) 26, 28, 32-37, 39, 41 and 43 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/21/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

CLAIMS

Summary

Claims 1,14,25,38,44 and 45 are the independent claims under consideration in this Office Action.

Claims 2-13,15-24,26-37,39-43 are the dependent claims under consideration in this Office Action.

Claim Rejections - 35 U.S.C. § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 25,27,29-31,38,40,42 and 44 are rejected under 35 U.S.C. § 102(e) as being anticipated by Cates et al. (6,056,768).

Cates et al. teach a method of measuring a distance between an outer surface and a punctured blood vessel and a method for positioning a pledget on the exterior of said vessel. Cates et al. teach a blood vessel BV (figure 5, for example) having an outer surface BVW and a puncture BVP for allowing a control head at the end of a

Art Unit: 3765

control member 20 to enter the vessel during a surgical procedure. The control member 20 includes an end, which has an expanding (tamponading) member 21 positionable for sealing the puncture during a further permanent sealing of the puncture and a second end proximal to the surgeon. An assembly 14 (figure 6) is advanced over the control tip adjacent to the exterior surface of the blood vessel until the tip of the assembly touches the blood vessel (see figure 7). The expanding member is retracted and placed up against the inside surface of the vessel. At this time, the marker 85 (same figure) is moved and placed onto the outer surface of the epidermis, and this marks the depth to the vessel outer surface BVW. In order to seal the puncture of the surgical procedure, the expanding member is retracted (as noted above) and the pledget 12 is held in position while the assembly (or delivery cannula) is retracted (see figure 8) and the pledget is exposed. The control head with expanding member is retracted fully after placement of the pledget.

ALLOWABLE SUBJECT MATTER

Claims 1-24 and 45-48 are allowable over the prior art of record.

Claims 26,28,32-37,39,41 and 43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

PERTINENT CITATIONS

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cates et al. illustrate a method of sealing a puncture including a fibrin adhesive and a control head.

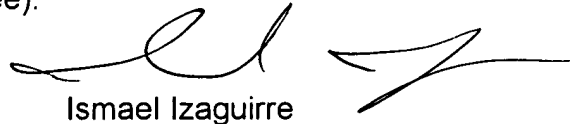
Art Unit: 3765

INQUIRIES

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ismael Izaguirre whose telephone number is (571) 272-4987. The examiner can normally be reached on M-F (8:30-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ismael Izaguirre
Primary Examiner
Art Unit 3765

II

3/2/05